

DETAILED ACTION

1.

A replacement drawing sheet was received 15 March 2010. These drawings are not acceptable. The drawing amendment filed 15 March 2010 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: in FIG. 4, the step of applying a second layer of coating is listed as optional; the application as filed included no disclosure that the step of applying a second layer of coating was optional. Applicant is required to cancel the new matter in the reply to this Office Action.

2.

The amendment filed 15 March 2010 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: In paragraph [0011], as amended, the statement that the perimeter of the dome like protrusions is defined by the mesh configuration. The application as filed includes no disclosure of how the perimeter of the domes is defined, or how the shape/perimeter of the domes might correspond to a shape of the mesh. The only disclosure of how the mesh and the

domes might be related is present in FIG. 3, however, FIG 3 is a cross-sectional view which would not convey to one of ordinary skill in the art any information about the shape of the perimeter of the domes and/or the configuration of the mesh, or how the perimeter of the domes is related to the shape of the mesh, if at all at any point in the two-dimensional expanse of the mesh except at the particular point at which the cross-section is shown. As such, the disclosure of FIG 3 is insufficient to support the limitation that the perimeter of the dome like protrusions is defined by the mesh configuration. In paragraph [0033], as amended, the step of applying the second layer of coating is listed as optional. The application as filed included no disclosure that the step of applying the second coating was optional. Additionally, the method of producing a construction board in amended paragraph [0015] omits the applying a second coating step. The method without this step is not supported by the application as filed. Applicant is required to cancel the new matter in the reply to this Office Action.

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4.

Claims 1 and 3-5 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had

possession of the claimed invention. Specifically, as amended, claim 1 recites that the coating layer comprises dome like protrusions whose perimeter is defined by the mesh configuration. The application as filed includes no disclosure of how the perimeter of the domes is defined, or how the shape/perimeter of the domes might correspond to a shape of the mesh. The only disclosure of how the mesh and the domes might be related is present in FIG. 3, however, FIG 3 is a cross-sectional view which would not convey to one of ordinary skill in the art any information about the shape of the perimeter of the domes and/or the configuration of the mesh, or how the perimeter of the domes is related to the shape of the mesh, if at all at any point in the two-dimensional expanse of the mesh except at the particular point at which the cross-section is shown. As such, the disclosure of FIG 3 is insufficient to support the limitation that the perimeter of the dome like protrusions is defined by the mesh configuration.

5.

Claims 3-5 fail to comply for the same reasons as claim 1.

6.

The following is a quotation of the second paragraph of 35 U.S.C. 112:
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7.

Claims 1 and 3-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites that the coating layer comprises dome-line protrusions whose perimeter is defined by the mesh configuration. First, it is unclear what might constitute a "mesh configuration." Is the mesh configuration the shape of the apertures in the mesh, a variable thickness of the mesh (such as that caused by orthogonally aligned strands crossing), some texture or shape into which the mesh is formed (such as the mesh being corrugated in some fashion), or something else? Second, it is unclear how the mesh corrugation defines the perimeter of the dome like protrusions. Does texture on the surface of the mesh cause the protrusions to extend upward, or do thickness variations push the protrusions upward, or do the edges of the apertures delimit the respective perimeters of protrusions, or something else. For purposes of examination, the mesh configuration will be construed as some organizational aspect of the mesh, and the mesh corrugation defining the perimeter of the domes will be construed as the perimeter of the domes being in some way related to the organizational aspect of the mesh. Claims 3-5 are unclear at least for the reasons of claim 1.

8.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 35 I(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9.

Claims 1 and 3-5 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over US 2004/0043682 to Taylor et al. Taylor discloses a composite tile backer board 10 (corresponding to Applicant's board for the construction industry) comprising a core 18 (corresponding to Applicant's base board) of expanded polystyrene (corresponding to Applicant's base board made of plastic; polystyrene is a plastic/Applicant's base board made of expanded polystyrene beads), a top portion 12 of a woven mesh fabric (corresponding to Applicant's mesh) and cement compound 16 (corresponding to Applicant's coating layer/coating layer comprising cement), which together form a mesh fabric layer (corresponding to Applicant's mesh disposed within said coating layer) (paragraph [0022] and FIGS. 1-2). The mesh fabric is coated with enough cement compound slurry to adhere it to the polystyrene layer and yet still leave a textured surface (paragraph [0024]). As can be seen in FIG. 2, the provision of slurry as described in paragraph [0024] leaves the upper surface of the top portion 12 with a textured surface with what appear to be small dome-

shaped protrusions protruding from the coating layer over where the individual fibers of the mesh are located (i.e. the perimeter of the domes is defined by the interstices of the mesh fibers (corresponding to Applicant's coating layer comprising dome-line protrusions whose perimeter is defined by the mesh configuration). With respect to claim 5, the cement slurry may comprise non-shrink additives (corresponding to Applicant's coating including additives) to minimize the shrinking of the slurry, and may comprise polymers to increase adhesion between the slurry and the mesh (corresponding to Applicant's coating including plastic adhesives) (paragraph [0027]). Therefore, claims 1 and 3-5 are rejected as anticipated by, or in the alternative, obvious over, the cited art.

10. Claims 1 and 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor (U.S. 2004/0043682 A1 as applied to claims 1, 3-5 above, and further in view of Peters (U.S. 1,604,236)

This rejection gives weight to applicant's claim construction of the protrusions being surrounded by the openings defined by the mesh. Taylor teaches a foam board with a cement layer and a mesh layer in the cement where the cement is coated on to the mesh. Peters teaches a board formed by putting the mesh into the cement layer and having the cement protrude through holes in the mesh (page 2, lines 105-115). The instant invention claims a mesh with protrusions between the fibers of the mesh. It would have been obvious to one of ordinary skill in the art to have formed the board of

Taylor by putting the mesh into the cement as an alternative way of making protrusions because of the teachings of Peters.

11. Applicant's arguments filed 02 March 2011 have been fully considered but they are not persuasive.

Applicant argues that the claim limitation of the perimeter of protrusions being defined by the mesh should be constructed to mean that the fibers of the mesh surround the perimeter of the protrusions and that this construction defines over Taylor. The position of the examiner is that the claim limitation can be constructed either way as given in the above rejections and is thus indefinite as noted above. A new rejection has been given that addresses applicant's argued claim construction. Applicant has failed to address any of the new matter and other 112 rejections, which have therefore been maintained.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Watkins III whose telephone number is 571-272-1503. The examiner works an increased flex time schedule, but can normally be reached Monday through Friday, 11:30 A.M. through 8:00 P.M. Eastern Time. The examiner returns all calls within one business day unless an extended absence is noted on his voice mail greeting.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on 571-272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For

more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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/WILLIAM P WATKINS III/
Primary Examiner, Art Unit 1783